

2011 Ill. 2d App (2d) 101118-U  
No. 2-10-1118  
Order filed December 12, 2011

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE BANK OF NEW YORK, as Trustee for	)	Appeal from the Circuit Court
the Holders of EQCC Asset Backed	)	of Kane County.
Certificates, Series 2001-2,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 06-CH-943
	)	
VINCENT J. LANGMAN; ABDUL REHMAN	)	
HAMIDANI; WELLS FARGO FINANCIAL	)	
ILLINOIS, INC., f/k/a NORTHWEST	)	
FINANCIAL ILLINOIS, INC.; TCF	)	
NATIONAL BANK; JOYCE HAMIDANI;	)	
UNKOWN OWNERS AND NON-RECORD	)	
CLAIMANTS,	)	
	)	
Defendants	)	
	)	
(JP Morgan Chase Bank, National Association,	)	
as the Purchaser of the Loans and Other Assets	)	
of Washington Mutual Bank, f/k/a	)	
Washington Mutual Bank, FA from the	)	Honorable
Federal Deposit Insurance Corp., Intervenor-	)	Alan W. Cargerman,
Appellant).	)	Judge, Presiding.

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JUSTICE BURKE delivered the judgment of the court.  
Justices McLaren and Schostok concurred in the judgment.

**ORDER**

*Held:* Where the order appealed from does not resolve the dispositive issue, it is a nonfinal order; although the order contains the required language under Supreme Court Rule 304(a), it cannot make an otherwise nonfinal order appealable; appeal dismissed.

¶ 1 Intervenor, JP Morgan Chase Bank, National Association, as the Purchaser of the Loans and Other Assets of Washington Mutual Bank, f/k/a Washington Mutual Bank, FA from the Federal Deposit Insurance Company (JPM) and plaintiff, The Bank of New York, as Trustee for the Holders of EQCC Asset-Backed Certificates, Series 2001-2 (BONY), held competing mortgages on the same property. The circuit court of Kane County entered orders of foreclosure of first liens in favor of the two different mortgagees in two separate cases proceeding concurrently against the same property. See No. 06-CH-943 (BONY foreclosure action) and No. 08-CH-848 (JPM foreclosure action). JPM filed leave to intervene in the BONY foreclosure action when JPM learned of the conflicting foreclosure orders. The trial court granted leave to intervene but denied JPM's motion to adjudicate the lien priority. JPM appeals the trial court's denial of its motion to adjudicate the lien. We find the order appealed from is not a final order as it did not resolve the dispositive issue raised between JPM and BONY. Accordingly, we lack jurisdiction to address the appeal, and it must be dismissed.

¶ 2 **FACTS**

¶ 3 **Instruments Recorded and Pleadings Filed Prior to Intervention**

¶ 4 In 1999, defendant, Vincent Langman, borrowed money from GN Mortgage Corp. (GN) and gave GN a mortgage on his house, located at 2311 Collins Court, Batavia, Illinois (Collins Court property), as security for repayment. The mortgage was recorded on July 21, 1999. On August 16, 2000, a forged release of the GN mortgage was recorded. In 2001, Langman borrowed from Matrix Financial Services Corp., and he gave Matrix a mortgage on his house to secure repayment of the

loan. On December 4, 2001, the Matrix mortgage was recorded and was later assigned to Deutsche Bank. On December 12, 2002, Deutsche Bank commenced a foreclosure of the Matrix mortgage, but it did not name GN as a party to the foreclosure action.<sup>1</sup> The Deutsche Bank foreclosure action concluded in a foreclosure sale wherein Deutsche Bank purchased the Collins Court property and later sold it to defendants Abdul Rehman Hamidani and Joyce Hamidani on February 17, 2005.

¶ 5 The Hamidanis then mortgaged the Collins Court property to defendant, TCF National Bank (TCF). The TCF mortgage was recorded on February 17, 2005. In late March 2006, BONY learned through its agent, Select Portfolio Servicing, of the August 16, 2000, release of the GN mortgage. BONY also learned that Langman continued to pay monthly installments for two years after the GN release was recorded, or until January 1, 2003. On June 29, 2006, BONY, through its attorney, obtained an affidavit from GN confirming that the August 16, 2000, release of its mortgage was forged. At no time did GN or BONY record an affidavit of correction from GN or any other document confirming that the release of its mortgage was forged.

¶ 6 BONY subsequently took an assignment of the GN mortgage, which was then in default, and filed a complaint to foreclose on July 10, 2006, in the circuit court of Kane County (BONY foreclosure). On July 13, 2006, BONY recorded a notice of foreclosure. Neither the BONY foreclosure action nor the notice of foreclosure contained any mention of the August 16, 2000, forged release.

¶ 7 Meanwhile, on August 1, 2006, the Hamidanis refinanced, obtaining a loan from Washington

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We assume that it did not name GN because Deutsche Bank and Matrix were relying upon the forged GN release recorded on August 16, 2000.

Mutual Bank (WaMu) for \$445,000 in return for two mortgages to secure the loan. On August 22, 2006, the WaMu mortgages were recorded. JPM took over WaMu during a reorganization of WaMu. The Hamidanis' interest in the property was the subject of the BONY foreclosure action, as the Hamidanis identified WaMu as their mortgagee in their affirmative defense to the BONY foreclosure action.

¶8 On March 10, 2008, WaMu filed a complaint to foreclose in the circuit court of Kane County (JPM foreclosure), based on the default of the Hamidanis' on the secured loans to WaMu. On June 6, 2008, the trial court entered an order of foreclosure and sale in favor of JPM, as assignee of WaMu on the Collins Court property.

¶9 Thereafter, on July 24, 2008, BONY obtained an order of summary judgment in its favor and against the Hamidanis in the BONY foreclosure action. On December 19, 2008, an order of first lien foreclosure and sale was entered by the trial court in favor of BONY as the assignee of GN on the Collins Court property.

¶10 Intervention

¶11 On March 12, 2009, JPM filed a petition to intervene in the BONY foreclosure action. JPM attached a motion to vacate the judgment of foreclosure and sale that the trial court previously had entered in favor of BONY. In the motion, JPM argued that it should be allowed to intervene because its mortgage on the subject property created an enforceable interest in the property at issue and a judgment of foreclosure and sale was entered six months prior to the judgment in the BONY foreclosure action, finding that the JPM mortgage was a valid first lien with respect to the property. BONY filed its objection to the intervention and filed an objection to the motion to vacate.

¶12 On May 21, 2009, the trial court permitted JPM to intervene "subject to all prior orders" in the BONY foreclosure action. On June 19, 2009, JPM moved to vacate the December 19, 2008,

BONY order of foreclosure and sale and requested leave to file an answer to the BONY complaint. On July 30, 2009, the trial court granted leave to JPM “as intervenor” to file an amended motion to vacate the December 19, 2008, judgment and a supporting memorandum. The trial court then set a hearing date.

¶ 13 On September 14, 2009, JPM filed an amended “motion to determine mortgage priorities” with supporting memorandum. In the amended motion, JPM requested an order to declare its two mortgages, both dated August 1, 2006, and recorded August 16, 2006, as the first and second liens on the subject property and that both mortgages were prior and superior to BONY’s mortgage dated July 14, 1999, and recorded July 21, 1999. JPM argued that BONY was equitably estopped to claim priority of its mortgage over JPM’s because, when BONY learned of the forged mortgage, it never recorded an affidavit of correction. JPM further argued that BONY was barred by the doctrine of laches from claiming primacy of its lien over that of JPM because it was aware of the two WaMu loans on November 13, 2006, and in the ensuing three-year period, it did not disclose to WaMu or seek to correct the record with respect to the forged release that was the basis of WaMu’s priority claim and could have made a claim to be prime three years before. During that interval, JPM took ownership of these two loans, believing that they were uncontested first liens, and WaMu and JPM spent three years on a useless foreclosure action, during which time the property substantially declined in value. The trial court denied BONY’s motion to strike and ordered JPM to file an amended motion for lien priority.

¶ 14 On December 1, 2009, JPM filed a motion for adjudication and memoranda in support. The first memorandum was “in support of its motion for priority and other relief” and the other memorandum was in support of its motion “to adjudicate priority between itself and the Bank of

New York as trustee.” BONY filed an objection to JPM’s motion to adjudicate priority, arguing that JPM could not re-litigate issues already decided and JPM’s interest was acquired subject to BONY’s notice of foreclosure. In its reply to BONY’s objection, JPM argued that the trial court retained jurisdiction to resolve the competing priority of the mortgages. JPM noted that BONY’s opposition based upon the filing of its notice of foreclosure was actually an argument that it had priority. JPM likewise set forth its arguments for priority but insisted that the trial court would be better served by scheduling a hearing on priority.

¶ 15 On March 30, 2010, the trial court entered an order stating: “Following full briefing and argument, the court denies [JPM]’s motion to adjudicate lien priority.” JPM moved for reconsideration, noting that it had made five points regarding the trial court’s duty to adjudicate priorities, but BONY ignored them and instead represented that the trial court had already decided the priority issue in favor of BONY.

¶ 16 On October 5, 2010, the trial court entered the following order:

¶ 17 “This matter coming before the court on JP Morgan Chase’s Amended Motion for Reconsideration; due notice having been given; the court being fully advised in the premises; it is hereby ordered: JP Morgan Chase’s Amended Motion for Reconsideration is denied. The court finds and holds there is no just reason to delay enforcement or appeal of this order.”

¶ 18 JPM appeals from the March 30 and October 5 orders.

¶ 19 ANALYSIS

¶ 20 Before we address the contentions raised by JPM, we must first consider whether we are without jurisdiction to hear this appeal. Although the parties agreed during oral argument that we have jurisdiction over the appeal, we have an independent duty to consider the issue and dismiss the

appeal where our jurisdiction is lacking. *Mund v. Brown*, 393 Ill. App. 3d 994, 996 (2009). We conclude that we do not have jurisdiction over this appeal.

¶ 21 Supreme Court Rule 304(a) (eff. Sept. 20, 2006) specifically provides in pertinent part that “[i]f multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both.” An order is final and appealable when it terminates the litigation between the parties on the merits or disposes the rights of the parties either on the entire controversy or on a separate part thereof. *Blott v. Hanson*, 283 Ill. App. 3d 656, 660 (1996). The true test of finality is if it finally determines the rights and obligations of the parties, without leaving matters of substantial controversy for subsequent resolution. *McCaffrey v. Nauman*, 204 Ill. App. 3d 761, 764 (1990). A Rule 304(a) finding does not make a nonfinal order appealable; rather, a Rule 304(a) finding makes a final order appealable where there are multiple parties or claims in the same action. *Blott*, 283 Ill. App. 3d at 660.

¶ 22 Both parties agree that, under the foreclosure law, the trial court had to resolve lien priority. See 735 ILCS 5/15-1103 (West 2010). BONY argues that the court did “implicitly” resolve the issue when it denied the motion. Our review of the trial court’s order makes it clear that the trial court did not make a substantive ruling concerning lien priority.

¶ 23 By denying the motion to adjudicate, the trial court left matters of substantial controversy regarding the disposition of lien priority between JPM and BONY, as the order did not contain any substantive decision regarding priority. Therefore, the order did not terminate the litigation between the parties on the merits of JPM’s claim. The mere presence of Rule 304(a)’s language, that there is no just reason to delay enforcement or appeal, cannot make a nonfinal order final and appealable.

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*People ex rel. Block v. Darm*, 267 Ill. App. 3d 354, 356 (1994). If an order does not adjudicate or resolve the claim, it is not a final order, and a finding under Rule 304(a) cannot confer appealability on it. See, e.g., *Revolution Portfolio, LLC v. Beale*, 332 Ill. App. 3d 595, 598-99 (2002).

¶ 24 Appeal dismissed.